I now come to the defendants' second ground which has been referred to by both counsel as "the Banco point". The defendants submit that on the authority of the decision of the Court of Appeal in *Monte Ulia (Owners)* v. *Banco and Others (Owners) The Banco*,[6] the plaintiffs cannot arrest both "Permina 108" and "Permina Samudra XIV" and that they can arrest only one ship in the ownership of the defendants. They rely on the following passage in the judgment of Lord Denning, at page 153: —

"... Shortly after the statute was passed, Willmer J. in *The St. Elefterio* [1957] P. 179, 185, said that the purpose of the Act is to confer 'the right to arrest either the ship in respect of which the cause of action is alleged to have arisen or any other ship in the same ownership.' That is clearly right. There is no doubt about it.

I would add that the word 'ship' in the phrase 'any other ship' means 'ship' and not 'ships.' Although the Interpretation Act 1889, says that words in the singular include the plural, that does not apply when the contrary intention appears. The contrary intention does appear here. The jurisdiction may be invoked against either the offending ship or any other ship in the same ownership, but not more than one...."

The plaintiffs do not in this court seek to challenge the correctness of the decision in *the Banco* case but they seek to distinguish the present cases. They submit that *the Banco* decided that where there is a claim based on a single cause of action, the jurisdiction *in rem* cannot be invoked by a single writ addressed to and served upon more than one vessel. The plaintiffs contend that the court is here dealing with quite a different matter because: —

(1) Two separate writs have been issued in two distinct actions.

(2) Each writ names only one ship.

(3) In each action the writ has been served upon only one ship, the ship named in the action and only that ship has been arrested.

(4) Although there are similarities in the claims made respectively in each action, because they arise out of breaches of the same charterparty, each action is founded upon distinct causes of action as can be seen from the statements of claims.

Counsel for the plaintiffs submitted further that where a contract provides for payment of a sum of money at different times by instalments, a fresh cause of action arises each time there is a failure to pay upon the due date and he cited a number of authorities in support of this submission. Counsel went on to submit that when the writs were issued, there were seven instalments due under the "Ibnu" charter and the plaintiffs could have therefore issued seven writs *in rem* against seven ships in the ownership of the defendants.

I am unable to accept this submission. It is true that in a contract providing for the payment of a sum of money by instalments, a fresh cause of action arises each time there is a failure to pay upon the due date. It is equally true that in such a contract when a number of instalments are due, they merge and become a single debt. If there are seven instalments due, one does not issue seven writs to recover the seven instalments. That is never done for the simple reason that the total sum due constitutes a debt recoverable by a single writ. In my judgment the plaintiffs have only one maritime claim in respect of all sums due under the "Ibnu" charterparty. In fact the claim endorsed on both writs is one and the same maritime claim, "non payment of the charter hire due under the Charterparty dated the 1st day of September 1970 in respect of the vessel "Ibnu"." And in the affidavits leading to the arrest of the "Permina 108" and "Permina Samudra XIV", the same maritime claim is relied upon, that "there is due and owing from the defendants to the plaintiffs the sum of U.S.$7,230,711.48 by way of unpaid charter hire in respect of the said vessel "Ibnu"." The factual evidence clearly does not support the submission of the plaintiffs that they have more than one maritime claim within the meaning of section 4(4) of the High Court (Admiralty Jurisdiction) Act. In my judgment the plaintiffs have only one maritime claim in respect of the non-payment of the charter hire due under the "Ibnu" charterparty and they are not entitled to proceed *in rem* against two ships for the same maritime claim. The plaintiffs having first arrested the "Permina 108", the subsequent arrest of the "Permina Samudra XIV" must be set aside and the ship be released. In the result the Motion in Admiralty in Rem No. 277 of 1976 is dismissed and the Motion in Admiralty in Rem No. 279 of 1976 is allowed with an order in terms of prayer 3 thereof.

Order accordingly.

Solicitors: *Rodyk & Davidson; Selvadurai & Emmanuel.*

THE "PERMINA SAMUDRA XIV"; MARTROPICO COMPANIA NAVIERA S.A. v. OWNERS OF "PERMINA SAMUDRA XIV"

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) November 26, 1976]

[Singapore — Civil Appeal No. 30 of 1976]

Shipping — Claim in respect of unpaid charterparty in respect of ship — Warrant of arrest issued and executed in respect of ship belonging to defendants — Whether warrant of arrest can be executed against second ship belonging to defendants — Charterparty payments payable at different times by instalments — Two writs taken out each naming only one ship — High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4(4).

In this case the appellants had a claim for the sum of US$7,230,711.48 by way of unpaid charterparty in respect of the *"Ibnu"* against the respondents. On July 24, 1976 a warrant of arrest was issued and executed against the *"Permina 108"*, a vessel owned by the respondents and the ship was detained. On the same day the appellants also obtained a warrant of arrest against another ship, the *"Permina Samudra XIV"* owned by the respondents. The respondents applied to the High Court to set aside the writ *in rem* and warrant of arrest against the *"Permina Samudra XIV"*. Before the conclusion of the hearing of the motion, the appellants filed their statements of claim, one in respect of the *"Permina 108"* for instalments amounting to US$3,418,521.41 and one in respect of the *"Permina Samudra XIV"* for instalments amounting to US$3,812,190.07. Choor Singh J. allowed the motion (*ante* p. 43). The learned judge held that the appellants having brought proceedings *in rem* against the respondents' ship *"Permina 108"* which they were entitled to do, cannot subsequently invoke by an action *in rem* the admiralty jurisdiction of the High Court against other ships of the respondents in respect of the same maritime claim. He found that there was one maritime claim in this case even though the charterparty provided for the payment of the

charterparty at different times by instalments. He also held that where a number of instalments are due they merge and become a single debt in respect of which only one action can be brought. The appellants appealed to the Court of Appeal.

Held, allowing the appeal: although where there is a claim based on a single cause of action, the jurisdiction *in rem* cannot be invoked by a single writ addressed to and served upon more than one vessel, in this case two separate writs had been issued based on separate and distinct causes of action and each writ named only one ship and had been served on only one ship, the ship named in the writ and therefore the appellants were entitled to arrest the "Permina Samudra XIV".

[**Editorial Note:** The Court of Appeal on January 20 allowed the respondents leave to appeal to the Privy Council.]

Case referred to:-

(1) *Monte Ulia (owners)* v. *Banco and Others (owners), the Banco* [1971] P. 137.

COURT OF APPEAL.

Michael David Thomas Q.C. (*C. Arul* with him) for the appellants.

Richard Stone Q.C. (*S. Selvadurai* with him) for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): This is an appeal from the judgment of Choor Singh J. dated August 25, 1976 allowing a motion taken out by the respondents, the owners of the ship or vessel "Permina Samudra XIV" to set aside a writ *in rem* and a warrant of arrest directed against the ship.

The "Permina Samudra XIV" was arrested by the appellants, Martropico Compania Naviera S.A., in respect of a claim stated in the endorsement of the writ to be a claim for non-payment of the charter hire due under a charterparty dated September 1, 1970 in respect of the vessel "Ibnu" which is owned by the appellants.

According to an affidavit sworn by the general manager of the appellants' agents in Singapore it appears that as at July 22, 1976 there was due and owing by the respondents to the appellants US$7,230,711.48 by way of unpaid charter hire in respect of the said vessel "Ibnu".

A warrant for the arrest of the "Permina Samudra XIV" was issued on July 24, 1976 and on the same day at 1.15 p.m. the warrant of arrest was executed and the ship detained. On the same day, the appellants had also obtained the issue of another warrant of arrest for the arrest of another ship, "Permina 108", owned by the respondents and the "Permina 108" was detained under the warrant of arrest at 1.00 p.m. on July 24, 1976 *i.e.* fifteen minutes before the detention under arrest of the "Permina Samudra XIV" The "Permina 108" was arrested pursuant to a claim stated in the endorsement to the writ to be a claim for non-payment of the charter hire due under the same charterparty in respect of the "Ibnu".

On August 11, 1976, before the conclusion of the hearing of the motion before Choor Singh J. the appellants filed their statement of claim which, *inter alia*, pleads as follows: —

"In accordance with Clause 10 and the other relevant provisions of the Charterparty hire and/or purchase payments became payable to the plaintiffs from the 16th day of December 1975 as follows: —

Date	*Amount* (US$)
16.5.76	621,564.36
16.6.76	938,590.64
16.7.76	929,529.69
16.8.76	928,836.72
Total	US$3,418,521.41

In breach of the said Charterparty the defendants have failed and/or refused to pay to the plaintiffs the whole or any part of the said amount due."

In the statement of claim filed on the same day in respect of the "Permina 108" it is pleaded, *inter alia*, as follows: —

"In accordance with Clause 10 and the other relevant provisions of the Charterparty hire and/or purchase payments became payable to the plaintiffs from the 16th day of December 1975 as follows: —

Date	*Amount* (US$)
16.1.76	972,588.71
16.2.76	945,115.70
16.3.76	934,443.14
16.4.76	968,547.41
Total	US$3,820,692.96
Less Credit Note No. 1	8,502.89
Balance	US$3,812,190.07

In breach of the said Charterparty the defendants have failed and/or refused to pay to the plaintiffs the whole or any part of the said amount due."

Choor Singh J. held that the appellants, having brought proceedings *in rem* against the respondents' ship "Permina 108" which they were entitled to do, cannot subsequently invoke by an action *in rem* the Admiralty Jurisdiction of the High Court against other ships of the respondents in respect of the same 'maritime' claim. He held on the facts that the appellants had only one maritime claim in respect of all sums due under the "Ibnu" charterparty even though it was not in dispute that the charterparty provided for payment of the charterparty hire and/or purchase payments at different times by instalments. He held that in a contract providing for the payment of a sum of money by instalments, while a fresh cause of action arises each time there is a failure to pay upon the due date, when a number of instalments are due they merge and become a single debt in respect of which only one action can be brought. He also held, on the authority of *Monte Ulia (Owners)* v. *Banco and Others (Owners) The Banco*,(1) the appellants can arrest only one ship in the ownership of the respondents because they have only one maritime claim in respect of all sums due under the "Ibnu" charterparty.

The appellants contend that Choor Singh J. erred in law in finding that notwithstanding the fact that in a contract providing for the payment of a sum of money by instalments a fresh cause of action arises on each occasion when there is a failure to pay upon the due date nevertheless when a number of such instalments had become due they merged and became a single debt recoverable by a single writ. Mr. Stone, for the respondents, concedes, and in our opinion

rightly so, that there is no doctrine of merger but he submits that the word "claim" in section 4(4) of the High Court (Admiralty Jurisdiction) Act must be intended by the legislature to mean "maritime claim" and that the Act contemplates the arrest of only one ship in respect of one maritime claim so that Choor Singh J. was correct in holding that the appellants had only one maritime claim in respect of all sums due under the charterparty. He submits that in section 4(4) there is a distinction between the expression "claim" and the expression "cause of action". Mr. Thomas contends that these two expressions must have the same meaning and that the word "maritime" is not found in the Act. He contends that the arrests of the "Permina 108" and the "Permina Samudra XIV" were in respect of two claims, each of which arises out of the list in section 3(1) and each of which is founded on a different cause of action as appears in the two statements of claim. He contends that if Mr. Stone is correct it would lead to injustice. On the facts of the present case it is conceded that the appellants could have issued separate writs *in rem* each time an instalment was not paid when due and in respect of each action a ship could be arrested. But where the appellants, as now, did not institute proceedings on each failure to pay an instalment and thus gives the respondents an indulgence, Mr. Stone says that the appellants can institute only one action *in rem* and thus can arrest only one ship because there is only one claim, even though they have more than one cause of action against the respondents.

We accept Mr. Thomas' contention and on the facts before us and before Choor Singh J. we are of the opinion that the appellants were entitled to arrest the "Permina Samudra XIV".

In our opinion, *"Monte Ulia (Owners)* v. *Banco and Others (Owners); The Banco," supra,* is distinguishable. In that case it was decided that where there is a claim based on a single cause of action, the jurisdiction *in rem* cannot be invoked by a single writ addressed to and served upon more than one vessel whereas in the present case the facts are that two separate writs have been issued based on separate and distinct causes of action and each writ names only one ship and has been served on only one ship, the ship named in the writ.

Accordingly, the appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Rodyk & Davidson; Selvadurai & Emmanuel.*

THE "PERMINA 108"; OWNERS OF "PERMINA 108" v. MARTROPICO COMPANIA NAVIERA S.A.

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) November 26, 1976]

[Singapore — Civil Appeal No. 31 of 1976]

Shipping Law — Action in rem against ship — Arrest of ship — Non-payment of charter hire under charterparty in respect of another ship — Motion to set aside action in rem and warrant of arrest — Admiralty jurisdiction of High Court — High Court (Admiralty Jurisdiction) Act (Cap. 6), ss. 3 and 4.

In this case the respondents had a claim for non-payment of the charter hire due under a charter party in respect of a vessel *"Ibnu"* which was owned by the respondents. The respondents brought proceedings *in rem* against the *"Permina 108"* which belonged to the appellants and the ship was seized under a warrant of arrest. The appellants applied to the High Court to set aside the writ in rem and the warrant of arrest against the ship but this application was dismissed by Choor Singh J. (*ante* p. 43). The appellants appealed to the Court of Appeal. It was argued that the respondents were not entitled to bring proceedings *in rem* against the *"Permina 108"* because the claim asserted in relation to the charter of the *"Ibnu"* has no connection with the "Permina *108"*, even if owned by the appellants.

Held, dismissing the appeal; (1) on the true construction of section 4(4) of the High Court (Admiralty Jurisdiction) Act, a ship to be liable to arrest must be (a) the ship in connection with which the claim made in the action arose, if at the time when the action is brought it is the property of the defendant to the action, the defendant being the person who would be liable on the claim in an action in possession and who was either the owner or charterer of or in possession or control of the ship at the time when the cause of action arose; or (b) any other ship which at the time when the action is brought, is the property of the person liable in possession and who at the time when the cause of action arose, was either the owner or charterer of, or in possession of or in control of the ship with which the claim arose;

(2) in this case the respondents were entitled to invoke the admiralty jurisdiction of the High Court against the *"Permina 108"* which on the undisputed facts was beneficially owned at the date of the issue of the writ by the respondents, who were the charterers of the *"Ibnu"* the ship in connection with which the appellants' claim arose and who also were the persons liable in respect of the claim;

(3) the learned trial judge was therefore correct in dismissing the appellant's motion to set aside the writ and the warrant of arrest of *'Permina 108"*.

[Editorial Note: The Court of Appeal on January 20 allowed the appellants leave to appeal to the Privy Council].

Cases referred to:-

(1) *Salomon* v. *Commissioners of Customs and Excise* [1967] 2 Q.B. 116, 143.

(2) *The Eschersheim* [1976] 1 W.L.R. 339, 436.

COURT OF APPEAL.

Richard Stone Q.C. (*S. Selvadurai* with him) for the appellants.

Michael David Thomas Q.C. (*C. Arul* with him) for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): This is an appeal from a judgment of Choor Singh J. dated August 25, 1976 dismissing a motion taken out by the appellants, the owners of the ship or vessel "Permina 108" to set aside a writ *in rem* and a warrant of arrest directed against their ship "Permina 108".

The "Permina 108" was arrested by the respondents, Martropico Compania Naviera S.A in respect